

SMALL BUSINESS ADMINISTRATION
Public Hearing
June 7, 2005

PUBLIC HEARING of the United States Small Business
Administration on the subject of small business size standards,
held on June 7, 2005, at City Hall, 389 Congress Street,
Portland, Maine, commencing at 8:30 a.m. before Thomas U.
Gordon, a Notary Public in and for the State of Maine.

APPEARANCES:

FRANK LALUMIERE, SBA, Government Contracts and Business
Development
KENNETH DODS, Moderator, Office of General Counsel
EDSEL BROWN, JR., SBA, Office of Technology
MARK HAYWARD, SBA, Acting Regional Administrator
BERNARD FEATHERMAN, President, CEO of the Biddeford-Saco
Chamber of Commerce
WESTON COULAM, Staff Editor, Senate Small Business Committee
SUMUL SHAH, President of Lumus Construction
RORICK SELLERS, Rorick Sellers Consulting
PHILIP LAMOURREUX, Quality Supply Corporation
CHERYL TIMBERLAKE, Executive Director of Maine BioTech
CHARLES GEHRES, Sales Manager, Ashland Electric Products
DEBORAH COOK, Executive Director, Maine Small Business Alliance
JOHN MASSAUA, State Director for Maine Small Business
Development Centers
RON PAYNE, President, Purchasing Services Inc.
MARK KAPLAN, Partner, CEI Ventures, Inc.
ANNE CERAMI, SBA Manager, TD Bank North
MARIE MEUNIER, Businesswoman in New Hampshire and Vermont

PROCEEDINGS

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2 MR. DODS: This is the U.S. Small Business
3 Administration Size Standard hearing. My name is Ken Dods
4 from the Office of General Counsel. I'll be the
5 moderator. We're going to go over the ground rules for
6 the testimony a little later, but first we have a
7 statement from the Acting Regional Administrator, Mark
8 Hayward.

9 MR. HAYWARD: Good morning, everyone, and welcome to
10 the beautiful city of Portland. My name is Mark Hayward.
11 My real job is the District Director in the State of Rhode
12 Island. I'm standing in today for the Regional
13 Administrator, Charlie Summers, who was appointed just a
14 few months ago, but he has been called up, and he's doing
15 his duty in places we cannot discuss, I guess, but
16 somewhere in the Middle East. So Charlie and Mike Pappas,
17 the Associate Administrator for Field Operations, asked if
18 I would come this morning and to be with you today. And
19 it's great to be here in the City of Portland. I'd like
20 to recognize Mary McAleney, the District Director here in
21 Maine, who does a tremendous job, and we appreciate
22 everything that she's done, and her staff, in setting this
23 up. And a number of members of her staff are here today.

24 The mission of the SBA is to maintain and strengthen
25 the nation's economy by aiding, counseling and assisting

1 and protecting the interests of small business, and by
2 helping families and businesses recover from national
3 disasters. As Regional Administrator, Charlie Summers is
4 responsible for all of the states here in New England, the
5 six New England states, including the State of Maine,
6 Rhode Island, Massachusetts, Connecticut, Vermont, and New
7 Hampshire. Size standards is a fundamental issue within
8 SBA since it determines which businesses are eligible for
9 SBA assistance, small business preferences on federal
10 contracts, and small business assistance for many other
11 federal contracts and programs and regulations. The
12 purpose of today's hearing is to hear from you on issues
13 pertaining to size standards, in particular, on ways the
14 SBA may simplify size standards, and other ideas to make
15 size standards easier to understand and to use.

16 The testimony presented today, at today's size
17 standard hearing, along with the other comments that were
18 received in December of 2004, Advance Notice of Proposed
19 Rulemaking, will be used to help the SBA develop new
20 proposals to further those objectives. We are also taking
21 the opportunity at these hearings to seek the public's
22 views on a question regarding the eligibility of
23 businesses minority-owned by venture capitals to
24 participate in the small business innovation program. On
25 behalf of Charlie Summer, Mary McAleney, myself, and

1 Administrator Hector Barreto, we want to thank you for
2 taking the time out of your very busy schedules to
3 participate in what we consider is a very vital hearing.
4 I will now turn the hearing over to our moderator, who
5 will introduce the panelists and go over the remainder of
6 the ground rules. Thank you.

7 MR. DODS: Okay. Thank you. Before I call the first
8 witness, let me go over some ground rules. This public
9 hearing is being held pursuant to the notice published in
10 the Federal Register May 12th, 2005. Your testimony will
11 be recorded by a court reporter. When you get to the
12 podium to speak, please state your name and the name of
13 your organization or company. I have a list of the
14 registrants. You get five minutes to talk. Obviously, we
15 can let you go a little longer if need be, but we want to
16 keep that uniform throughout the country. We're having 11
17 hearings everywhere else, and it's five minutes for all
18 the presenters. We'll take any written material you have.
19 We want to get a copy of your testimony, if you have that,
20 and also anything else that you want to give. You need to
21 give it to Rose. The panelists here will ask -- may ask
22 questions of you at the end of your testimony. We're not
23 going to get into a discussion or a debate about the
24 issues. We're not here to decide anything. We're just
25 taking down information. If you're from the press, please

1 talk to Rose. She might have a packet for you, and you
2 can get on the list. And if you haven't signed in or
3 registered before you got here, please see Rose, as well.
4 Please be courteous when others are testifying. And I ask
5 that you turn off your pagers and cell phones. And with
6 that said, we're going to call the first witness, who is
7 Bernard Featherman.

8 MR. BEATHERMAN: Honorable SBA representatives,
9 ladies and gentlemen. My name is Bernard Featherman. I'm
10 President and CEO of the Biddeford-Saco Chamber of
11 Commerce. I'm here today to represent our members of the
12 Chamber, mostly small businesses with concerns about the
13 Small Business set aside program. I'm a resident of
14 Maine, a partner in the Steel Service Center Company and
15 the former President of a steel equipment manufacturing
16 company, all of which are small businesses. My knowledge
17 of small business set asides came about when I served
18 under the three White House conferences for small business
19 during President Carter, Reagan, and Clinton's
20 administration. One of the most important issues to come
21 up during these conferences was the small business set
22 aside provision and its category breakdowns that the
23 federal government put into effect.

24 Small businesses are approximately 97 percent of
25 businesses in this great State of Maine. They are the

1 engines that power our economy in a small-populated state
2 of 1.25 million people. Set asides can make a significant
3 contribution to our state's economy that pay taxes, use
4 American material, labor, and we make a profit. As a
5 state of very small businesses, this Small Business Act
6 fits us ideally. It mandates the establishment of a small
7 business set aside that encourages bids from at least two
8 responsible small businesses to bid on a contract and
9 award to be made at reasonable competitive prices.

10 A small business is defined for the Small Business
11 Act as independently owned and operated for profit, not
12 dominating in the field of operation in which it is
13 bidding on government contracts, and qualify under
14 criteria and size standards such as number of employees,
15 dollar volume. Federal set asides practically cover all
16 kinds of businesses in retail, wholesale, manufacturing,
17 and service industries, including professional services.
18 Many small businesses in our community do not realize this
19 opportunity.

20 The Small Business Act has worked very well in the
21 past and still does. There are some exceptions, when
22 small companies have set asides that are bought out by big
23 companies, generally over 500 employees. The acquired
24 company sometimes continues to set aside business
25 afterwards, even though regulations state to the contrary,

1 following a merger or buy out by a big company. In such a
2 situation, the SBA should mandate that the acquired small
3 business become ineligible for future set aside small
4 business contracts from the government. Every time such
5 events occur on small business set asides, it cheats or
6 robs all small businesses that lose the opportunity to get
7 these government orders. Fortunately, these events occur
8 infrequently.

9 SBA must enforce specific regulations on small
10 business set asides. Rules need to be simplified. A
11 flowchart is needed, along with a checklist, to clarify
12 steps to be taken to maintain oversight on certifications
13 of prime contractors and small business contractors, small
14 disadvantaged businesses, women-owned businesses, and
15 small business, and empowerments on small businesses. To
16 keep small business set asides from being fraudulently
17 used, whistleblower fees should be awarded to those people
18 bringing about such illegal events to the government's
19 attention.

20 On a more positive note, I recently polled about a
21 dozen small companies in Biddeford and Saco. There were
22 very interesting remarks made from the diverse industries,
23 such as service companies, manufacturing, packaging, steel
24 products, steel metal works, electronics, and woodworking
25 manufacturing companies, with reference to set asides.

1 Here are some of the remarks. Quote, it's difficult to
2 muddle through a state agency that's helping us get
3 business. Quote, I am interested but do not know about
4 small business set asides. Quote, I have no information
5 on small business set asides. I definitely want to know
6 more. Quote, I sell to the U.S. Post Office, but didn't
7 know about federal set asides. Tell us more. Quote, we
8 welcome knowing about set asides. Quote, no, we don't
9 know about set asides, but we are most interested in
10 learning about them. Quote, not familiar with set asides.
11 It must be a lot of paperwork. Tell me more about it.
12 We're interested. Only one of the people I called and
13 interviewed said, yes, I'm familiar with small business
14 set aside programs.

15 What small businesses in Maine need to know is how
16 the federal government facilitates such programs. Steps
17 are needed to validate set aside procedures and
18 requirements in order to satisfy the letter and the spirit
19 of set aside requirements. While some agencies will vary,
20 probably due to particular businesses for which it is
21 engaged, the basic tenets are the same. Small business
22 set asides are really big business to us. We need it in
23 Maine to create more jobs, secure more business, increase
24 linkages with prime contractors and other subcontractors.
25 Results are clear. There is a lack of awareness by most

1 small businesses of the opportunities in contracting with
2 big contractors or getting direct small business contracts
3 under \$100,000 on set asides. For very small businesses,
4 orders for this select group in the \$2,500 to \$50,000
5 range in government business are very important. Micro
6 businesses also have the opportunity to solicit up to
7 \$2,000 in orders from government agencies.

8 It's a no-brainer. Show them how to do it and they
9 will help all small businesses, especially in Maine, where
10 we have so many one-person small businesses. Small
11 Business must set a linkage via email to proper government
12 agencies to put a bid list to quote the federal government
13 purchases. Small businesses have to be briefed on what to
14 do on information given by contractors for project
15 briefings, or federal agencies, especially SBA, on how set
16 asides can be obtained. Maine businesses need all the
17 help you can give them. We have talked to the SBA
18 representatives in Augusta, Maine. The Biddeford-Saco
19 Chamber of Commerce stands ready to collaborate with you
20 on this all-important mission to aid small business
21 survival in Maine. Thank you.

22 MR. DOS: Okay. Thanks a lot.

23 MR. FEATHERMAN: Right. Take care now.

24 MR. DODS: Okay. Our next witness is Wes Coulam.

25 MR. COULAM: Good morning. My name is Wes Coulam.

1 I'm the Staff Editor for the Senate Small Business
2 Committee. I'm here on behalf of Senator Olympia Snowe,
3 who is Senator from Maine, as well as the Chair of the
4 Senate Small Business Committee. And we appreciate the
5 SBA and especially Hector Barreto, the SBA Administrator,
6 for agreeing to Senator Snowe's request to hold a size
7 standards hearing here in Maine, and I appreciate the
8 opportunity to be a part of this event.

9 As you know, over 97 percent of the Maine employers
10 are small businesses. Any changes to the size standards
11 will have a direct impact on their ability to continue to
12 create jobs. And so it is, of course, important that we,
13 for Maine, make sure the size standards -- any changes
14 that are made to that regulation benefit small businesses
15 and not hinder their ability to grow and develop and to
16 create -- create jobs. It's been the policy of Congress
17 for 50 years to foster the small business sector. Their
18 laws of the Small Business Act, the SBR act, the small
19 business investment act, and others provide regulatory
20 relief and regulations to help the small business
21 community grow and foster. The size standards determine
22 which firms are eligible to participate in these programs
23 and be able to benefit under these policies as Congress
24 intended. Most frequently size standards are used for a
25 federal contracting officer in the course of procuring

1 goods and services for the federal government. Small
2 firms that are covered by these designations and are
3 covered by small business -- small business set asides and
4 by the size standards regulations are able to compete for
5 both prime contracts and subcontracts.

6 Congress has granted the SBA the primary regulatory
7 responsibility for establishing size standards. Since
8 1953, the Small Business Act has maintained few main
9 requirements for the firm to be considered a small
10 business. First, each concern must be independently owned
11 and operated. Second, such concern must not be dominant
12 in its field or economic activity in which it is engaged.
13 This broad definition reflects the judgment of Congress
14 that small business ought to be defined by reference to
15 the size and economic power of top industry leaders, which
16 dominate respective markets.

17 Small businesses come in a variety of forms and
18 relative sizes, from start-up one-person sole
19 proprietorships to relatively more-established and
20 successful firms with multiple employees. This is made
21 clear by the Small Business Act, which states that the
22 Administrator shall ensure that size standards vary from
23 industry to industry.

24 Any reformed size standards must be true to
25 professional policies which constitute the small business

1 sector and on the need to encourage and not discourage the
2 small business sector's competitiveness. And this has not
3 been always the case. And we welcome the Small Business
4 Administration's withdrawal of its original proposal,
5 action in 2004, to modify the size standards. And we
6 thought that this proposal had the potential to suppress
7 jobs and also to displace many small business firms from
8 participation in these small business programs.

9 The Small Business Committee has received many
10 comments that the current classification systems are
11 generally sound and not complicated or complex. They're
12 relatively easy to understand in comparison with other
13 federal regulations. But it is true that they can be
14 simplified, and they can be made easier to understand and
15 to operate. As previously stated, the goal of these
16 standards is simplification. Yet it has been -- it is our
17 concern that one of the reasons for simplification is to
18 make the workload, not of small business but of government
19 officials, easier. Changes in the size standards in this
20 way is at fundamental odds with the reason why size
21 standards exist in the first place. They're there for
22 small businesses to gain access to the programs and set
23 asides and other programs of the federal government.

24 Recently we have heard that SBA would consider
25 educing generally the 500-employee size standard to a

1 hundred employees. We are very troubled by this proposal
2 because of the potential economic harm it would cause to
3 small businesses. For instance, there are several firms
4 in Maine and elsewhere, particularly here in Maine, that
5 would exceed the hundred-employee threshold that would be
6 immediately cut out from participation in small business
7 programs, resulting in the loss of jobs and their access
8 to new opportunities to grow and develop. In addition,
9 this proposal, if it was enacted to impose a one-size-
10 fits-all 100-person -- 100-employee cap would do damage to
11 America's international trade position. For example, the
12 European community has in their size policy, it calls for
13 various forms of aid to European firms up to 500
14 employees. If the U.S. -- if the United States reduces
15 the size requirement for small businesses, many
16 procurements that could have been set aside for American
17 small businesses would be opened to overseas competitors
18 instead. I don't think we want to read reports of foreign
19 firms successfully acquiring government contracts at the
20 expense of American small businesses as a result of
21 changes in the size standards regulations.

22 It's also imperative that the SBA work with Congress
23 to devise a better way to ensure that small business
24 programs by both the very -- are accessed by both the very
25 small firms and the relatively larger firms that are still

1 small in comparison to their industry leaders, and we look
2 forward to working with the SBA to accomplish this goal.
3 One proposal, one idea that's out there, is a tiered size
4 standard system with several -- so there are several tiers
5 for each size standard category. Contracts of lower size
6 would be reserved for companies in lower tiers. Companies
7 in every tier could compete for contracts appropriate for
8 that tier or the higher tier. We recognize that this may
9 require legislative changes to make this program or this
10 system work. But I applaud the SBA for soliciting ideas
11 about this idea, this proposal, and we look forward to
12 working with the SBA on its final regulations.

13 One area where small business would benefit from
14 simplification is the use of receipts-based standards
15 versus employee-based standard. In general, a gross
16 receipts calculation may be performed once a year as a
17 small business faces its tax returns. On the other hand,
18 employee-based calculations require tedious and often
19 complicated payroll tracking. I urge the SBA to continue
20 allowing small businesses to base their average receipts
21 calculation on a 36-month period, rather than going to a
22 12-month period.

23 In addition, current SBA regulations fail to
24 distinguish between part-time, seasonal, and full-time
25 employees. As a result, firms that employ part-time,

1 seasonal, retired, or student workforces are forced to
2 closely monitor and limit, in many -- in some cases, their
3 hiring decisions in order to avoid exceeding the size
4 standards cap. Many Maine firms fall into this category.
5 Many companies in Maine have seasonal workers and part-
6 time employees. Also given the recent economic recession,
7 this policy is a hindrance on those small business. And
8 we would endorse the conversion of employee-based
9 standards to full-time equivalents to encourage better job
10 creation.

11 I also urge SBA to work with industries and carefully
12 -- various industries and carefully examine whether the
13 receipts-based or employee-based approach makes better
14 sense for them. As I mentioned at the outset, it's clear
15 in the statute that says, the Administrator shall ensure
16 the size standard varies from industry to industry. I
17 think that is very key as you go forward in your
18 deliberations that -- to take into account and
19 consideration the unique circumstances of the various
20 industries and not establish a one-size-fits-all solution
21 that may not be appropriate for some industries and that
22 don't work for others.

23 In conclusion, it's the government's role to ensure
24 that our small businesses encourage and develop and grow -
25 - are developed and are growing, that they receive a fair

1 shot at competition for both government contracts,
2 technology grants, and also access to other SBA and
3 government programs. Small Business Committee and Senator
4 Snowe look forward to working with the SBA as you go
5 forward with these regulations. And we have a full
6 written statement that we'd like to submit for the record.

7 MR. DODS: Okay. Give that to Rose, okay?

8 MR. COULAM: Okay.

9 MR. DODS: Thank you. Are there any questions?

10 MR. BROWN: I have one quick question.

11 MR. COULAM: You bet.

12 MR. BROWN: Edsel Brown, Office of Technology at SBA.
13 I saw that you mentioned a tiered system.

14 MR. COULAM: Uh-huh.

15 MR. BROWN: Could you just give us just a little bit
16 more on the framework of that tiered system, you know,
17 just fairly briefly, but just a little bit more
18 information?

19 MR. COULAM: Well, I think as -- as the notice
20 indicated, you requested comments on that -- that type of
21 system. We have not developed that system ourselves, but
22 looked at it, and I think -- as I understand it, the
23 tiered system would -- would operate in this way, and I
24 don't have all the details of how it would work, but I can
25 give you kind of a sense, as I understand it, that it

1 would work in such a way that basically you would have
2 various tiers within each size standard category. And
3 there would be competition within, like, very small firms,
4 medium-sized firms, and larger firms, within the size
5 standard category. And then the competition would occur,
6 rather than between the small firm of say, 20 employees,
7 versus the larger firm that has maybe 490 employees, or
8 it's based on a revenue threshold. They would be
9 competing within their individual tier. I think we might
10 have better witnesses who would come testify today who
11 have more detail on this proposal, but that's how I
12 understand how it -- how it would work.

13 MR. BROWN: Okay. Well, no, that's fine. I thought
14 you had some comments on an alternative way of doing the
15 tiered system.

16 MR. COULAM: No. I --

17 MR. BROWN: Okay.

18 MR. COULAM: My point was I think that it's something
19 that the SBA should look at and -- and consider and fully
20 -- fully consider the comments people bring forward on
21 this.

22 MR. BROWN: Okay. Thank you.

23 MR. COULAM: Thank you.

24 MR. DODS: Our next witness is Joseph Jack, and if
25 he's not here, we'll call him again at the end. Joseph

1 Jack? All right. Dennis Duhl? Okay. Sumul Shah?

2 MR. SHAH: Good morning. My name is Sumul Shah. I'm
3 the President of Lumus Construction. We're a small
4 general mechanical and electrical construction company.
5 We have offices in Woburn, Massachusetts and also here in
6 Portland, Maine. Through our own hard work and also
7 assistance through the SBA aid program, we have grown over
8 the last seven years from employing three people to at
9 times employing over 170 people. The SBA has provided a
10 tremendous benefit to Lumus Construction, and we're very
11 much interested in seeing how size changes impact our
12 business. We have -- as we've grown, we've seen receipts-
13 based standards applied to the construction industry, and
14 while I think in general, it's a -- it's a fairly good
15 indication of size of -- of construction companies, we've
16 had difficulty navigating the various NAICS codes that in
17 some cases are applied arbitrarily by contracting
18 officers, that for some specialty contractors, the size
19 standard drops dramatically and for general contractors,
20 is a much larger threshold. For us, as we've grown, we've
21 seen -- we've experienced difficulty going from a -- being
22 able to continue on some of the small specialty contract
23 work that there's some discretion as to how the NAICS code
24 is applied and also be able to -- be able to continue the
25 work under the larger NAICS code.

1 Now, one of the things that we'd propose is to -- in
2 simplifying the size standards, if you -- if a receipts-
3 based standard were to continue, were to look at an
4 industry and also look at NAICS codes that are related to
5 the industry that we're in and apply a one-size standard
6 to the definition of small business throughout that
7 industry. We do think that a tiered system works in many
8 cases, and -- and a very small business -- if I say a
9 small business, that sort of two tiers can work in our --
10 in our particular circumstance.

11 Now, we're very concerned with proposed size changes
12 that treat part-time employees similar to full-time
13 employees. We have a tremendous seasonal business here in
14 Maine. We go from employing very little over the winter
15 months to -- to having a large number of people during the
16 summer months, and to count all of them, whether it's --
17 whether they're in the summer or in the -- in the winter
18 months, to count all of them as an employee would
19 disproportionately -- or would not be the proper
20 indication of our true size. We think that full time
21 equivalents is -- if an hours -- an employee system were
22 to be used, full time equivalents is a relatively easy
23 calculation. Our payroll system will give us the number
24 of hours that all of our employees have worked, and by
25 dividing that by a denominator, a common denominator, we

1 can easily calculate the -- what a reasonable full-time
2 equivalent would be.

3 That's it for my comments. Thank you.

4 MR. DODS: Any questions? Can you give your
5 testimony to Rose? Okay. Aubrey McCall? Rorick Sellers?

6 MR. SELLERS: I'm Rorick Sellers, sole proprietor,
7 Rorick Sellers Consulting. I'm here today to briefly
8 comment on one of the stated issues that are supposed to
9 be the topic for these public hearings, namely the
10 approach to simplify size standards. And therefore,
11 specifically I'm supposed to explain how the size
12 standards are complicated and describe the benefits to
13 small businesses and the users of size standards, if
14 certain modifications are adapted.

15 But it occurred to me that in order to describe the
16 benefits of these standards to small businesses, it seems
17 important to make clear precisely what a small business
18 is. When I registered to testify, I was told to read a
19 document in the Federal Register that talked about how, in
20 previous public comments, out of 4,500 people, more than
21 2,300 not only stressed a single issue but used identical
22 language to express their views. The impression given is
23 that these people's opinion doesn't count. Why should
24 they use the same language? Why shouldn't they use the
25 same language? It's a little like saying that these 2,300

1 people all signed the same petition. It would be silly,
2 wouldn't it, that when people sign a petition, they go and
3 change a few words here and there, just to make it look
4 like it's all their own individual writing. These people
5 say that the standard should be 100 employees, not 500.
6 How many ways are there to express this? When people
7 speak with one voice, what's wrong with that? What --
8 what's the criticism there?

9 To get back to the approach to simplify size
10 standards and describing benefits to small businesses, it
11 seems obvious what the approach should be, merely one that
12 promotes the survival and thriving of the smallest
13 business entities. I support our President when he says
14 the ownership society is what our country needs, the
15 ownership society, where people can own their own
16 businesses. In a small community, say 5,000 workers, if
17 we want to encourage people to start and own their own
18 business and we split these citizens up so that they all
19 work for firms -- firms of 500 employees, there would be
20 ten such companies. And how many people would actually
21 own or act like they own their own business? I'm thinking
22 not too many, maybe a dozen or so. But split that same
23 community of workers into companies of no more than a
24 hundred employees, there would have to be at least 50 of
25 these, and how many folks would be owners? A hundred?

1 200?

2 Regardless of the fact that 98 percent of all
3 American businesses have fewer than a hundred employees,
4 in 1985, the SBA arbitrarily decided to change the non-
5 manufacturing size standard from a hundred to 500
6 employees, forcing legitimate small businesses into head-
7 to-head competition with large corporations. This change
8 occurred overnight and with no opportunity for public
9 input. Currently, the SBA has received overwhelming
10 support, over 10,000 comments, for returning the non-
11 manufacturing size standard to a hundred employees, yet
12 you insist on holding public hearings. It's perplexing
13 that an overwhelming request cannot be implemented as
14 expeditiously as an arbitrary request with minimal
15 support.

16 Mr. Gary Jackson, SBA Assistant Administrator for
17 size standards, was quoted in a local paper the other day.
18 He was talking about why it was that some of the biggest
19 companies in the world had received hundreds and hundreds
20 of millions of federal government dollars that were
21 supposed to be set aside for the support of small
22 businesses. He talked about how there are millions of
23 small businesses out there, and most companies are very
24 small. And it would be a waste of time for them to submit
25 information and for the SBA to review whether they qualify

1 to catch a few who don't meet the requirement. He said,
2 we think the self-policing method is the most appropriate
3 way to handle the situation. This, to me, sounds like a
4 blatant straw-man argument. He wants us to worry about
5 millions of companies? It's too complicated, blah, blah,
6 blah. I don't think it's true that there are millions of
7 small businesses out there. I don't think wasting their
8 time is the way most of these business owners would
9 describe the importance of keeping the billions of dollars
10 that are set aside by Congress for their support. It
11 wouldn't be a waste of time, but is that really the issue
12 here? Does one really have to review all 23 million small
13 businesses? Wouldn't it make more sense to closely review
14 the relatively few thousands of businesses that actually
15 receive set aside money to make sure that they comply?
16 And do it every year and enforce penalties for flagrant
17 violators.

18 Thank you for this opportunity to express my views.

19 MR. DODS: Let me just reiterate, if you are
20 testifying, that you should give a copy of your testimony
21 to Rose over here, if you have a copy. The next witness
22 is Phillip Lamourreux. Okay, there you are.

23 MR. LAMOURREUX: I am here.

24 MR. DODS: Okay. Sorry. Good morning.

25 MR. LAMOURREUX: Hi. Thank you. I appreciate the

1 opportunity to speak to you guys. I have several sizes
2 actually, but I think my contribution may be quite
3 important.

4 My wife and I have 31 years history doing business
5 with the government and the military. And the only way I
6 can explain this is to -- some personal experiences of
7 where we've been over the last 31 years doing business
8 with the government as a small business. We started by
9 first, 14 years back in 1974, being plumbing contractors
10 with six employees. Most of our work was at Brunswick
11 Naval Air Station or Portsmouth Shipyard. Six employees
12 in Maine -- anything -- anything more than ten employees
13 is considered a large business in the contracting business
14 in plumbers. Okay? We were competing against companies
15 with 20 to 50 employees. Those companies with the 20 to
16 50 employees were receiving an extra five to 15 percent
17 extra discount on materials. The only way that we could
18 compete with them was to -- we had to work on the same
19 wage scale because that's the government requirement, but
20 the only way we could compete with them was to take less
21 profit or the owners taking less salaries.

22 We spent the next eight years doing business against
23 wholesale distributors in this -- in this state. We had
24 three employees at the time. We were selling plumbing
25 valves and fittings to the plumbers, the wholesalers, and

1 also to the military. At first, the larger distributors
2 would come to me, they'd pat me on the back, and say, good
3 luck, young man. It soon followed by direct orders to
4 their sales people, tell us what Phil's price is and we'll
5 beat it by ten percent. And I couldn't do anything about
6 that. The wholesalers are a conglomerate. Two of the
7 largest ones in the world owned distributorships
8 throughout the State of Maine and most other states in
9 this country. And those were the people I had to compete
10 against.

11 For the last nine years, my wife and I and my son
12 have been selling directly to the DLA through micro
13 purchase system. We -- we bid on jobs, bring the material
14 in, repackage it, and ship it back out again.
15 Unfortunately, we're competing against companies that have
16 500 employees. If you have 500 employees, you can enjoy
17 major discounts from the manufacturers on repair parts or
18 on valves themselves because the manufacturers are going
19 to -- because of your mass volume that you're buying, the
20 manufacturers are going to give them five to 15 percent
21 more discount.

22 I do have some recommendations, however, and based on
23 our personal experiences, okay. First off, we have spent
24 about 40 to 50 hours on this, the three principals in my
25 company. We did not take this lightly. I didn't write

1 this yesterday. I shortened it yesterday. I was
2 shortening it last night at 11:00 o'clock. But anyway, we
3 agree that the SBA -- with the SBA that size standards for
4 classification of small businesses be lowered from 500 to
5 100 employees. We feel that this would be a major
6 improvement, allowing small businesses to only have to
7 compete against other small businesses. We feel that
8 primary revenues from companies with over 100 employees is
9 gained through large contracts, and would like to become
10 larger ourselves. However, it's increasingly difficult
11 with what appears to be a foot in the back of your necks
12 whenever you try to grow.

13 Employee count as set forth in 21.106 should continue
14 to remain. QS continues having to compete against several
15 of the largest distributor companies in the world by them
16 claiming small business status. Some large businesses are
17 competing for contracts totaling less than a hundred
18 dollars. One of the largest ones in the world constantly
19 takes jobs away from me in the micro purchase, and they're
20 bidding jobs, a hundred dollars, \$200, total job. This is
21 very depressing.

22 With just the part-time employees that -- that is
23 being brought up, many of the larger companies have a
24 predominant amount of part-time employees. I do -- I
25 believe that they all should be counted. We need to stay

1 within the confines of 1.21.106.

2 As far as the tiered system, I think it possibly
3 could be good in the future, not now. It's going to take
4 you years to develop it. Develop it. Do it for the next
5 reauthorization. Understanding the rules -- and I have
6 addressed many of the things -- the major concerns, and
7 we've taken a lot of time to do that -- understanding the
8 rules. The primary reason for small business size
9 standard rules -- they're hard to understand -- is that
10 different components can be missed in the interpretations
11 because of being scattered throughout the different
12 sections. Buying agencies have condensed, clarified
13 instructions for buyers that is not shared with the
14 contractors. We believe that these condensed rules were
15 derived from protests that were filed with legal and are
16 based on their final determination. As it stands now, if
17 a contractor feels that an RFQ has been issued wrongly
18 without a small business set aside, their primary course
19 is to protest without the availability of all the
20 knowledge necessary to make the proper determination. The
21 sharing of these condensed, confined instructions would
22 greatly help contractors understand the set asides and
23 would limit considerably the sometimes confusion.

24 VCC participation: We feel that to allow VCCs to
25 compete in any way in the SBIR program or any other SBA

1 program would considerably exacerbate the problems and
2 will not support the intent of the SBA. We feel that if a
3 small business can gain support from a VCC, then they have
4 no need for SBA participation. We feel that if allowed to
5 participate, VCCs will take available monies away from
6 legitimate small businesses. We feel that VCCs have
7 enough capital of their own and have no need for further
8 subsidies from SBA. We feel that if VCCs are allowed to
9 participate in the SBIR program, they will not stop at
10 this level of involvement. Buying agencies are
11 continually trying to get small businesses to be more
12 involved with the large businesses by suggesting that we
13 support large businesses as subcontractors while they
14 continue to bundle jobs. Buying agencies want to purchase
15 from large businesses, as this will lower their cost of
16 operations by having to write fewer purchase orders.
17 Buying agencies are not taking into consideration that
18 once we, the small businesses are gone, the government
19 will be at the mercy of the large businesses, and product
20 will one, cost much more; two, may not be what the
21 government purchased; three, be packaged the way the large
22 business wants to package; four, be delivered within the
23 large business's timeframe, not the government's. We see
24 this now as we bid against the large companies. They ship
25 anyway they want. I can't. You know, in other words, if

1 I have to pack it one per box, I have to do that. That's
2 a requirement of the RFQing contract. They don't follow
3 those same rules, and they're let slide.

4 Quality Supply Corporation is already experiencing
5 involvement of large businesses who have received large
6 rewards requesting quotes from us without regard to our
7 needs, refusing to allow accountability for who they
8 purchase from, the reason, and prices, other than our
9 quoted price was too high. The large business does not
10 share enough knowledge with the small business, except
11 it's our way or the highway. We have seen large
12 businesses require absolute best pricing every time, and
13 once the small business can no longer meet this
14 requirement, they are discarded and replaced by another
15 small business reaching for that elusive brass ring.

16 For the above reasons, Quality Supply Corporation has
17 been refusing to work as subcontractor to large
18 businesses. In summation, Quality Supply Corporation has
19 had some success trying to grow a worthwhile and
20 substantial business over the past 31 years. Quality
21 Supply Corporation has had to hide from the overshadowing
22 large businesses that, primarily for their own personal
23 greed or personal interest, have been a hindrance to the
24 success of the small business operation. That's all.

25 MR. LALUMIERE: Phil, I was going to ask you a

1 question. My name's Frank Lalumiere, and I'm with SBA
2 Government Contracts and Business Development. Do you
3 currently have six employees? Or you started out with --

4 MR. LAMOURREUX: We currently now have four
5 employees: My wife, myself, my son, and one packing
6 person. We have approximately a hundred -- about a
7 hundred open contracts right now with the government.
8 Many of them are -- are small, you know, a few hundred
9 dollars up to a few thousand dollars. Our primary
10 position in the small business is competing against about
11 150 people in the country. Out of 150 people in the
12 country, 20 of us get probably 80 to 90 percent of the
13 contracts, doing business with DSCC and DSCP and
14 (inaudible). We're probably the smallest of those
15 contractors. Some of the big ones, however, will do
16 anything they want. The QARs, when they do their
17 inspections, they're afraid to -- to go up against them.
18 Many of the QARs don't even do inspections all across the
19 country. I protested a job the other day. The QAR sent
20 me an email from Washington yesterday. I called him up
21 yesterday afternoon. He says, oh, no, we just let it go.
22 This guy hasn't been a problem, so we never even went out
23 and looked at the product. I says, well, it's to a
24 drawing. You know, he's supposed to be providing you this
25 product. You know, he doesn't have any choice. It's to a

1 particular military drawing. And he was very surprised,
2 but he never saw the product, and the product has been
3 shipped. Over a hundred valves went to the Navy. They're
4 going to try to use them on a control system, and they're
5 not going to be able to use them because form, fit and
6 function, they won't be the same. They did not buy them
7 from the source.

8 MR. LALUMIERE: I gotcha.

9 MR. LAMOURREUX: This constantly happens. The large
10 businesses take so much advantage. And it's not entirely
11 DSCC's or the other buying agency's problem. They don't
12 have any money, so they don't have any people. They don't
13 have any technicians to even review product. The buyers
14 don't know what they're buying. You know, this gets a lot
15 further than what we're here to discuss today.

16 MR. LALUMIERE: So your comment on whether -- how we
17 should count employees, full time, part time, you were
18 saying part time should be counted as --

19 MR. LAMOURREUX: As full time, absolutely.

20 MR. LALUMIERE: -- as full time. I gotcha.

21 MR. LAMOURREUX: I know -- I mean, I have a friend in
22 this state. He built his business from nothing. He now
23 has several hundred employees. Almost every one of them
24 are part time. I would like to say, hey, my friend, you
25 know, you can have what you want, but I don't play that

1 game. You know, I believe he should be classified as a
2 large business. The -- you know, a contractor here, a
3 plumbing contractor here in Maine, with ten employees or
4 more is really a large contractor because 99 percent of
5 the plumbing contractors have less than that. Ninety-nine
6 percent of them have, you know, the father, and the son,
7 and a helper. That's a small business. I think we've
8 gotten so far away from what actually is a small business
9 in this country. Yeah, there are some problems. I
10 personally hope you don't try to fix them all before you
11 come up with some kind of recommendation. Just like
12 tiered structure. A tiered structure would be good, but
13 it has to be understandable. When I asked the buyers how
14 did they choose a particular job to be -- be a small
15 business set aside, well, I can -- I can look at all the
16 information I got to find out how the national stock
17 number was chosen and -- and so forth. But there's still
18 not enough information. They have, at their availability,
19 references from legal that tell them this is the right way
20 to function. We don't have that, and we're not allowed to
21 have that. If we were able to find out what is
22 acceptable, what is not acceptable, and the reasons why,
23 it would certainly make everything much more clear to all
24 contractors. I'd like to personally get that information
25 myself, but that's not right. Everybody should have it.

1 I just want to be on the same playing field as -- as
2 my -- as my competition. That's all I want. I don't want
3 any special consideration. I want to be on the same
4 playing field. I want to be able to bid against somebody
5 that's paying the same price as me for product. We track
6 every job we bid, right from the start to the finish, and
7 then we take the entire field and we stock it in -- not
8 only on the computer, but in hard copies, by national
9 stock number. When the job comes up again for the same
10 product, we pull out the history. If I didn't get the
11 job, I want to know why. Well, actually I know before it
12 even goes back in the file because we track every job
13 right from the start. There's a lot of people that say,
14 well, how do you get involved with the -- how do you get
15 involved with the SBA? How come I can't have any 8(a)
16 money? How come I can't have this? Everything is here.
17 You know, get your butt out and find it. You know,
18 everybody complains about SBA not having this stuff out
19 there. It's out there. You got market development. You
20 got the Ptax. You got all kinds of people out there that
21 are willing to spend all kinds of time helping us. Hey,
22 that's how I got involved. I didn't re-invent the wheel
23 myself. But if you want to do business with the
24 government -- I would tell everybody right here, if you
25 want to do business with the government, you've got to

1 make sure you want to do business with the government
2 because you're going to do business with the government
3 the way the government wants. They're the customer.
4 That's the way we're supposed to do business. I -- that
5 was for the benefit of some of the other people here, but
6 believe me, that's the way it's got to happen. You know,
7 you're not going to do business with the government doing
8 business the way you want to do business. But they're a
9 very good trading partner. We enjoy them. They don't let
10 us make a lot of money. They keep the profit margins
11 really low. But they pay well, and we have a very good
12 life with them now. You know, we're not rolling in dough,
13 but we bought our first insurance policies a couple of
14 years ago for medical insurance. We've gone for 25 years
15 without medical insurance. So the government is a good --
16 is a good trading partner out there. But this does need
17 to be fixed. You know, and we -- we have to lower the
18 standards. You've gone way out -- small business -- Small
19 Business Administration is for small business. Please
20 keep the VCCs out of this. That will be a very big
21 problem. It would -- it would -- it would do exactly what
22 I've been competing against, the big businesses, ever
23 since we've been in business since 1974. You know, and I
24 know they're under a lot of pressure. I've gone to other
25 meetings where people have supported -- you know, we want

1 VCC involvement and get some help for these small
2 businesses. But it isn't going to work that way. The
3 VCCs are going to control everything. That's the --
4 that's the big corporations again, large business.

5 MR. BROWN: I have one quick query. Has your firm
6 either ever received or put in a proposal for an SBIR
7 award?

8 MR. LAMOURREUX: Myself?

9 MR. BROWN: Yeah.

10 MR. LAMOURREUX: No, I have not. I have not. I've
11 looked at it. I've spent a few hours on it. I don't see
12 anything there that I can contribute, where I would be
13 worthy of an SBIR award. However, I do understand the
14 plight of some of these small businesses in the IT
15 marketplace. But, you know, if they've got a hundred
16 employees, give them the money. If they have a worthy
17 project, give them the money. Let them develop it. They
18 don't need a VCC. And if they can get a VCC to back them,
19 then they don't need the SBA. You know, and that's not
20 hard to understand. No, I haven't myself, been involved
21 in -- in the SBIR, but I -- I look at the world in black
22 and white, very few gray areas. But I do get my -- do my
23 research, and I usually know what I'm talking about, not a
24 hundred percent, but most of the time.

25 MR. DODS: Okay. Thank you, sir.

1 MR. LAMOURREUX: Thank you. And thank you for the
2 time. I appreciate it. I could have done the long one,
3 but --

4 MR. DODS: All right. We're going to call Marie
5 Meunier.

6 MS. MEUNIER: I'm not ready. Sorry.

7 MR. DODS: You're not ready? Okay. We can come
8 back. How about Julius Barton? Stephen Maloney? All
9 right. Cheryl Timberlake? Okay.

10 MS. TIMBERLAKE: Good morning.

11 MR. DODS: Good morning.

12 MR. BROWN: Good morning.

13 MS. TIMBERLAKE: My name is Cheryl Timberlake, and
14 I'm the Executive Director for Maine BioTech. Maine
15 BioTech is the umbrella organization for the wide range of
16 entrepreneurs, professors, researchers in Maine's diverse
17 colleges, our nonprofit research institutions, our start-
18 up companies, and our established firms engaged in
19 biotechnology and life sciences here in Maine. On behalf
20 of Maine BioTech, I want to thank the SBA and the panel
21 for visiting us here, and an opportunity to testify. My
22 comments today will focus on an issue directly impacting
23 many of the Maine BioTech firms here in the state, and
24 that is the obstacle to participate in the SBIR program by
25 businesses that are majority owned by VCCs. Excuse me.

1 The SBIR program is an important source of funding
2 for early-stage biotechnology research. Specifically
3 small biotech companies rely on both phase one and phase
4 two grants to fund cutting-edge research in areas where
5 venture capital and other sources of financing are very
6 difficult to obtain. However, to be eligible for an SBIR
7 award, a business concern must be at least 51 percent
8 owned and controlled by, quote, individuals, end quote, or
9 citizens of the United States. In addition, the concern
10 may not have more than 500 employees, including its
11 affiliates. Through a series of rulings, the SBA's Office
12 of Hearings and Appeals has interpreted the term, quote,
13 individuals, end quote, to mean human beings. This
14 interpretation excluded corporations and all other forms
15 of artificial entities, including the VCCs. There is no
16 statutory definition requirement that compels this
17 interpretation, nor is there a definition of the term
18 individual in the law establishing the SBIR program. As a
19 result, many small businesses in the biotechnology and
20 life sciences sector cannot participate in the SBIR
21 program because one or more of their owners or investors
22 is a corporate entity or a VCC. This unnecessary
23 exclusion of these small businesses is not consistent with
24 the purpose of the SBIR program, which is to stimulate
25 small businesses that will commercialize important

1 technological developments. The exclusion could also lead
2 to a decline in the quality and quantity of the SBIR grant
3 applications submitted to NIH and other agencies involved
4 in bio-terrorism and other important health-related
5 activities.

6 In early 2005, my national umbrella organization, the
7 Biotechnology Industry Organization, BIO, conducted an
8 informal survey of its members active in the SBIR
9 community. The survey results confirmed that SBA's
10 interpretation is limiting many small biotech companies
11 from participating in the SBIR program. Although over 70
12 percent of the survey respondents were privately owned
13 small businesses with less than 50 employees, many of them
14 reported that they are ineligible to receive an SBIR
15 grant. Specifically, of the privately held companies, 70
16 percent are majority owned and controlled by multiple
17 VCCs. The number of VCCs have an equity stake in their
18 small businesses range anywhere from two to 22. Only one
19 VCC has an equity stake greater than 40 percent, according
20 to the survey respondents, while most of the VCCs held
21 between seven and 30 percent. Of the last five years, 62
22 percent of those surveyed respondents applied for an SBIR
23 grant. Exactly half of those applicants were either
24 denied SBIR grants immediately because they could not meet
25 the SBIR eligibility requirements due to their ownership

1 structure, or were subsequently denied a grant due to an
2 adverse size determination. Finally, over 60 percent of
3 those privately held companies responded that they had
4 chosen not to apply for an SBIR grant due to their
5 perceived eligibility concerns.

6 The solution? We believe if you were to remove the
7 barrier to participation in the SBIR program, we would
8 urge SBA to revise the SBIR eligibility requirements and
9 issue a proposed rule that reflects Congress's original
10 intent to encourage awards to small businesses that have
11 successfully attracted outside investors. The approach
12 proposed by SBA in its December 3, 2004 Advance Notice to
13 Proposed Rulemaking to disregard affiliation is a step in
14 the right direction. However, it does not address the
15 fundamental obstacle, which is SBA's requirement that
16 small businesses be majority owned and controlled,
17 directly or indirectly, by individual human beings. We
18 recommend that SBA adopt a rule that addresses the actual
19 ownership structure of small biotechnology companies that
20 are owned and/or controlled by VCCs. Specifically, we
21 suggest that the size requirements be revised to permit
22 VCC ownership of SBIR applicants to count towards the 51
23 percent U.S. ownership and control requirement. This
24 would allow greater participation in the SBIR program by
25 small biotechnology companies that would not permit

1 participation by venture owned firms that are affiliated
2 with large companies.

3 If these proposed changes were enacted, small
4 business with ownership structures similar to many here in
5 the State of Maine would be able to take advantage of this
6 important program and participate in research efforts to
7 our nation's health, safety and security. Thank you.

8 MR. DODS: Do you have a question?

9 MR. BROWN: Yeah. I have a question. The changes
10 that you propose, your recommendations, what impact do you
11 think that would have on the program? If the changes that
12 you're suggesting were implemented down the road, what
13 impact do you think that would have on the program?

14 MS. TIMBERLAKE: The hope for the small biotech life
15 science companies that I represent here in the State of
16 Maine, those who believe that they are discriminated
17 against because of that interpretation, would then come
18 forthwith and continue to apply and receive additional
19 research funding grants through the SBA.

20 MR. BROWN: And, of course -- excuse me -- and, of
21 course, in the alternative, let's say if no change was
22 made, what impact do you think it would have on your
23 membership? They're not going to apply, or what -- what
24 do you think they'll do? Would they go for alternative
25 sources of funding?

1 MS. TIMBERLAKE: With the high tech industries,
2 specifically biotech, it is incredibly research oriented,
3 which is expensive. Many of the spin-off and start-up
4 companies that we have in the state, we are trying to
5 encourage from an economic development standpoint. Our
6 nonprofit research institutions have intellectual property
7 that we're trying to spin off and create economic wealth.
8 Their ideas go forthwith in terms of creating wonderful
9 products for health and security. We want to ensure that
10 they have the financial capital to move it forward
11 wherever the sources may be. But as you can imagine, it's
12 limited here in the Northeast, and we want to keep them
13 here as small companies. We want to enable them to take
14 their ideas, take their intellectual capital, whoever
15 funds it, and move it forward.

16 MR. LALUMIERE: Cheryl, I enjoyed your comments. I
17 wanted to ask you, in Maine -- and you may have mentioned
18 a number, but approximately how many small businesses do
19 you believe are affected by this issue that you --

20 MS. TIMBERLAKE: In late 2003, the last economic
21 profile survey we did in partnership with the University,
22 there are close to 95 life science entities in the State
23 of Maine. The question -- when you -- when you determine
24 small and I determine small, it's somewhat relative. But
25 we have a number of -- I would say 80-plus small. The

1 others would go into the larger category, and I won't get
2 into specific names. I can certainly provide you with
3 that follow-up information. But again, part of my job is
4 to listen to them, help them grow and develop their
5 company and their infrastructure, and figure out what it
6 takes. There are small state-sponsored programs that help
7 them, but not to the magnitude that it takes a life
8 science company to grow to that next level.

9 MR. LALUMIERE: Thank you.

10 MR. DODS: Okay. Thank you.

11 MS. TIMBERLAKE: Thank you.

12 MR. DODS: Richard Williams? Dr. Alan Fuller? Okay.
13 How about Tim Clark? Charles Gehres, Ashland Electric
14 Products?

15 MR. GEHRES: Good morning, gentlemen.

16 MR. DODS: Good morning.

17 MR. BROWN: Good morning.

18 MR. GEHRES: I'm Chip Gehres, Sales Manager for
19 Ashland Electric Products. We're a 12-person research and
20 development and manufacturing company that manufactures
21 electric motors, fans, and blowers for the Defense
22 Department Aerospace Products. We've been in business 53
23 years now. We are a genuine small business with 12
24 employees. Our competition, under the present rules of
25 500 persons in the motor industry and the fan and blower

1 industry, is probably about 150 manufacturers of these
2 products in the United States, of which probably four
3 would be above 500 employees. So everybody else is below
4 that. I just got in some information off of the websites
5 of some of my competition. I'd like to list these for
6 you, if you would like to. One of them is Ametek Rotron.
7 Their website says, we're a leading global manufacturer of
8 electronic instruments and electric motors with an annual
9 sales of \$1.3 billion. Ametek has over 8,300 colleagues
10 working in more than 70 facilities in the United States
11 and 18 other countries.

12 MR. DODS: Can you speak up a little bit, sir? I'm
13 having trouble hearing you.

14 MR. GEHRES: I'll try to.

15 MR. DODS: Okay. Thank you.

16 MR. GEHRES: Under the CCR registration through the
17 DLAs that you can get off Procurement Gateway, they're
18 listed as a small business.

19 MR. DODS: How many employees do they have?

20 MR. GEHRES: Their website says 8,300.

21 MR. HAYWARD: I don't know how that's possible.

22 MR. GEHRES: I've attached a list of some of the
23 contracts that we've lost to them this year. Some have
24 been close on competition. Some you can definitely see
25 that they wanted to get the business, so they can go ahead

1 and quote whatever price that they'd like.

2 MR. HAYWARD: Can I ask a question?

3 MR. DODS: Yeah. Can we ask you a question? I'm
4 sorry. We're not supposed to be doing this, but --

5 MR. HAYWARD: Did you protest any of those bids?

6 MR. GEHRES: Our findings with the government is when
7 you protest, that goes directly to the buyer. That
8 influences the buyer's offering you any awards in the
9 future, so we do not protest awards. And -- and that --
10 that can be documented. Okay? We've also done a
11 whistleblowing once, and that shut our company down for
12 about two years. And we won't do that again.

13 Last Thursday I attended the -- for the State of
14 Vermont with -- the Vermont Governor was there. It was a
15 matchmaker event for large businesses and small
16 businesses. At this, we were there representing a small
17 business, of course, and Ametek Rotron was there
18 representing a prime contractor in a large business. But
19 still they're registered with the CCR as a small business.
20 The business card for their representative there calls it
21 -- for a small business liaison officer. Ours is a small
22 business. We don't have such a person on our staff. I
23 guess this small business can.

24 A second one that we have here for -- enter into
25 evidence, Aeronautics Corporation of America. The company

1 under them that we compete against is (inaudible) Flight
2 Guidance System. On their website, they don't give their
3 dollars that they annually sell or the amount of
4 employees, but they speak of (inaudible) Flight's
5 operations occupy over a million square feet of design and
6 manufacturing space. Our small company, we use 15,000
7 square feet, a little under a million. They are also
8 registered in the CCR and Procurement Gateway DLA website
9 as a small business.

10 A third one is Globe Marconi -- you may have heard
11 those names before -- (inaudible). They're a
12 manufacturer, as we are, of electric motors, fans and
13 blowers for the Defense Department. I could not get the
14 statistics on how large they are. They're a large
15 Canadian-owned company, and they're also listed on the CCR
16 as a small business.

17 First off, the 500-employee status in our
18 manufacturing and design that's left in this country is
19 ludicrous. There's just only a couple of large -- General
20 Electric and a few people like that that still qualify
21 above 500 people. Everybody else is 50 people or less.
22 There just isn't a lot of middle ground because all of the
23 -- the commercial type products have been taken offshore
24 into the Asian manufacturing rim. The small companies
25 like us that are in niche markets like defense and

1 aerospace and medical and homeland defense and the things
2 that we deal in, we're getting just clobbered with these
3 supposed small businesses at \$1.3 billion in sales.

4 MR. DODS: Thank you. We have a couple questions, I
5 guess.

6 MR. HAYWARD: The first company that you mentioned,
7 you said it was registered on the CCR; is that correct?

8 MR. GEHRES: That's correct. All three of these are.

9 MR. HAYWARD: What -- how many employees do they
10 identify on the CCR?

11 MR. GEHRES: I don't believe that that's on this.
12 The amount of employees is not given.

13 MR. HAYWARD: It's not given?

14 MR. DODS: There are other -- there are other pages
15 where you can get that kind of information. I know that
16 SBA has recently started to go through the registrations
17 in CCR ProNet, just start to cull out the companies that
18 are saying that they're small when they're not. One of
19 the problems is I think that they can say they're small
20 for like say, a 1,500 employee size standard for like
21 aircraft manufacturing, that they do some business in
22 that, and they might show up as small, even though for
23 many contracts, they're not small. For individual
24 contracts, if you don't protest their size -- if someone
25 doesn't protest their size, they can get away with false

1 certifications if they do that. So --

2 MR. HAYWARD: Your -- your business is basically DOD,
3 NASA related?

4 MR. GEHRES: We don't do any work for NASA. We do
5 almost -- between all of the Department of Defense, the
6 DLA's, Richmond and Philadelphia in particular, direct --
7 we'll sell -- send ship's parts. You know, they'll email
8 us in from a ship, they're going to port somewhere. We'll
9 send them out a product to the next port where they're
10 going to be. You know, we're very responsive. We're a
11 small veteran-owned company, and you know, the war fight
12 is our -- our goal to serve that person. You know, I have
13 a daughter that just got out, and I've got a son that's
14 still in. So --

15 MR. LALUMIERE: We have a -- we have a very small
16 group here, and I think your -- your comments are very
17 important, and we take them very seriously, Chip. And as
18 Ken was mentioning, just within the past couple of months,
19 we've taken some steps to prevent some of the occurrences
20 that you've mentioned. And we will look into those issues
21 very, very soon, to see what's going on. But -- but we,
22 you know, are taking steps, and -- and just recently, to
23 correct some problems that have appeared in the CCR. So I
24 just wanted you to know that.

25 MR. BROWN: I would just like to say that I'm

1 concerned about the chilling effect that you're expressing
2 regarding filing a protest. And we will definitely take
3 note of that, as well.

4 MR. GEHRES: You know, I can -- if you'd -- if you
5 would like to wire tap phones in there, in DLA, I would be
6 glad to give you names of people whose phones to wire tap.
7 And I'm as serious standing here as you can be. It's not
8 a funny thing. When you're a small business and because
9 you protest an award, or you protest a cancellation of an
10 award to you, and you're cut off basically, and your --
11 you know, your dollar valuing goes from two million one
12 year to, you know, 800,000 the next, you don't do it
13 again. Okay? You don't.

14 MR. DODS: We've heard that a lot. That's -- that's
15 -- we hear that a lot from small businesses.

16 MR. GEHRES: Like I said, if you want names and phone
17 numbers, I can give them to you, put the tap on them, and
18 you'll move that person out real -- real quick. But we're
19 not going to protest anything, sir. That ain't going to
20 happen. You get along to get along, I guess.

21 MR. DODS: Thank you. Thank you, sir. The next
22 witness is Deborah Cook.

23 MS. COOK: Morning.

24 MR. DODS: Good morning.

25 MS. COOK: Good morning, and welcome to Maine.

1 Thanks for bringing the sunshine today. My name is
2 Deborah Cook, and I'm the Executive Director of the Maine
3 Small Business Alliance. I appreciate the opportunity
4 this morning to testify.

5 The Maine Small Business Alliance is a statewide
6 nonprofit membership organization of small businesses.
7 Established in 2002, we focus on advocacy and education
8 that engages Maine small businesses in creating
9 sustainable solutions for a vibrant and entrepreneurial
10 small business economy. We have 175 supporting business
11 members across the state representing over 2,000 employees
12 from Farmington to Bar Harbor and Bangor to Kittery. We
13 are dedicated to championing the interests of small
14 business in Maine, a group that collectively employs half
15 of the state's labor force and that is dominated by firms
16 with fewer than 50 employees.

17 We hear time and again how important small business
18 is to jobs and to the economy of Maine and the United
19 States. We know this from the numbers. We also know that
20 small business is the backbone of communities across the
21 state. We know that without a competitive small business
22 economy, we lose not only jobs and tax revenue, we lose
23 the character of entrepreneurship and local ownership on
24 which the nation was founded. We also risk losing the
25 benefits of civic leadership and volunteerism that follow

1 that level of ownership. We also know that small business
2 exists today in a highly competitive and difficult
3 environment, battling disproportionately higher costs for
4 transportation, energy and infrastructure, while competing
5 in a global marketplace with both medium and large firms.
6 Our job at the Maine Small Business Alliance is to help
7 advocate for a level playing field for Maine small
8 businesses. To that end, I support revising the
9 definition of small business to fewer -- to -- to 100 or
10 fewer employees. Simplifying the definition as one
11 element, perhaps not the only, for defining small business
12 will make it easier for small businesses to understand and
13 for them, the smallest firms, to gain access to programs
14 that will help them grow. I believe that this is a more
15 accurate and fair representation of small business in
16 Maine, and in that, helps to level the playing field when
17 competing for government contracts, SBA programs, and
18 other government programs.

19 People in Maine frequently ask me, how to you define
20 a small business? I have responded that because 95
21 percent of Maine's businesses have fewer than 50
22 employees, that's the number we use. I also add that I
23 recognize that the SBA uses 500 employees as their
24 definition, and I say, in Maine that number is just not
25 relevant because our businesses are much smaller. Maine

1 small businesses should not be excluded from participating
2 in, competing or winning government contracts, or from any
3 other business competition solely because of their size.
4 They should be able to compete equitably and fairly for a
5 share of that market. I'm happy to take questions. Thank
6 you.

7 MR. DODS: Thanks a lot. John Massaua?

8 MR. MASSAUA: Good morning.

9 MR. DODS: Good morning.

10 MR. BROWN: Morning.

11 MR. MASSAUA: My name is John Massaua. I'm a
12 resident of China Village, Maine, Board member for the
13 Association of Small Business Development Centers, and
14 State Director for the Maine Small Business Development
15 Centers headquartered at the University of Southern Maine,
16 here in Portland. I'm here today to testify on behalf of
17 the Association of Small Business Development Centers, as
18 to comment on the proposed rulemaking published by the
19 U.S. Small Business Administration in the Federal Register
20 on issues related to the SBA's effort to restructure its
21 small business size standards. The ASBDC represents the
22 63 state, regional and territorial Small Business
23 Development Center programs, comprising America's Small
24 Business Development Center network. All ASBDC grantees
25 located throughout the 50 states, the District of

1 Columbia, Puerto Rico, the Virgin Islands, Guam, and
2 American Samoa, are members of the ASBDC, including Maine
3 SBDC, which I direct.

4 Section 21 of the Small Business Act, which
5 authorizes the national SBDC network, requires SBDCs to
6 provide management and technical assistance to small
7 businesses and aspiring entrepreneurs. In addition, as
8 part of providing management and technical assistance to
9 small businesses, SBDCs help small businesses to access
10 small business opportunities in lending, procurement, and
11 other small business programs. Since its establishment by
12 Congress in 1980, America's SBDC network has provided in-
13 depth counseling of an hour or more and training of two
14 hours or more to approximately 11 million small business
15 and aspiring entrepreneurs. Millions more have used the
16 national SBDC network as an informational resource for
17 answers to questions as simple as to how to get a business
18 license or where to get an employee identification number
19 or how to get a government contract. The ASBDC
20 appreciates the opportunity to share its views with the
21 SBA in the structuring of the size standards, which could
22 affect the eligibility of thousands of small businesses
23 that receive management and technical assistance from
24 their local SBDC, as well as eligibility for procurement
25 opportunities, loans, and other small business programs.

1 The SBDC urges the SBA to consider the following in
2 any changes to the size standards. One, small businesses
3 receiving small business management and technical
4 assistance, loans, procurement opportunities, or
5 participating in other small business programs at the time
6 of any change in the small business size standards, should
7 not be disqualified as a result of the change. It could
8 be very disruptive to a small business receiving
9 assistance from its local SBDC and formulating its
10 business plans based on the eligibility for SBDC
11 assistance, as well as small business loans, procurement
12 opportunities, and other small business programs, to be
13 disqualified from receiving such assistance as a result of
14 a change in small business size standards. To prevent
15 such disqualification, the SBA should, in any change to
16 size standards, grandfather any small business that is
17 participating in a small business program so that such a
18 small business can continue to participate under the size
19 standards that existed before the change.

20 Two, any change in the SBA small business size
21 standards should be designed to address a specific problem
22 in the current size standards that has been identified as
23 a barrier to the participation of small businesses and
24 small business programs. Broad sweeping changes in the
25 size standards, which do not address identified problems

1 faced by small businesses but would prevent thousands of
2 small businesses from accessing the systems they need, are
3 counterproductive.

4 Three, any changes to the size standards should be
5 thoroughly analyzed for their impact on small business, in
6 general, and on small business in particular industries,
7 as required by the Small Business Regulatory Enforcement
8 Fairness Act, SBREFA. Small businesses are particularly
9 vulnerable to regulatory changes because they are less
10 able to absorb unforeseeable costs. The SBA should take
11 this into full consideration before making changes to the
12 size standards.

13 Four, any changes in the size standards should
14 preserve enough flexibility in the standards to account
15 for the diversity of small businesses and unpredictability
16 of the form and the needs of emergent industries and
17 future small businesses. Changes in the size standards
18 should not discourage small businesses from creating new
19 jobs, for example, for fear of exceeding a standard based
20 exclusively on the number of employees, without taking
21 into account other factors, such as business receipts.
22 Small business decisions, such as hiring or laying off
23 employees, should be driven by market factors, not by
24 their need to adapt to changing regulations.

25 And speaking particularly on behalf of Maine small

1 businesses, of which more than 98 percent employ less than
2 a hundred employees, and 91 percent employ less than 20
3 employees, we ask that any changes in size standards pay
4 fastidious attention to businesses with employees of less
5 than a hundred, but in no way cause harm to those
6 currently served under existing rules. Therefore, a
7 tiered system using FTEs seems to be a reasonable
8 solution, if it's well thought out and implemented with
9 simple -- simple-to-follow rules. Thank you for allowing
10 this opportunity to testify on behalf of the ASBDC, the
11 Maine SBDC, and the Maine small business community on the
12 restructuring. I'm happy to take any questions.

13 MR. DODS: Okay. That's good. Thank you, sir. Ron
14 Payne? Good morning.

15 MR. PAYNE: Good morning. My name is Ron Payne. I
16 am the founder and President of a professional services
17 company called Purchasing Services Inc. in Boston. I come
18 as one person from the Minority New England Council,
19 Supplier Development Council, but I want to just speak
20 briefly about the fact that we have done a substantial
21 amount of consulting with the Department of Transportation
22 and the United States Postal Service, in both instances,
23 as a temporary staff member of a team from a majority
24 owned firm. The industry leaders in our area -- and we
25 call our sales management consultants -- if you were to

1 look at the five largest companies that identify
2 themselves as management consultants, it would begin with
3 Price Waterhouse Coopers, who recorded revenues of \$16
4 billion in 2004; Accenture, \$15 billion in 2004; CAP
5 Gemini, which is an affiliate with Ernst & Young, \$8.5
6 billion; KPMG, \$4.1 billion; and Deloitte Consulting, \$3.2
7 billion. If we look at the aggregates of just those five
8 firms in 2004, it was \$39.6 billion. So if you were to
9 just look at a ten percent average of that, we are talking
10 now about the average revenue as being \$6.5 billion among
11 the largest firms.

12 The interesting thing about this for me is the -- the
13 consulting business is labor intensive. If you look at
14 the revenue per employee number -- for an example, Price
15 Waterhouse Coopers has 122,000 employees. That's over a
16 million dollars of revenue per employee. If a large part
17 of the revenue is labor, then what does a small business
18 bring to the market except very, very favorable labor
19 rates? And what I'm trying to suggest is we believe that
20 it is important to look at a tiered system. And one of
21 the things I've developed a greater appreciation for just
22 sitting in the room here this morning is the notion that
23 the one size can't fit all. There are some very different
24 kinds of situations that I recognize that you -- you would
25 have to address based on industry, based on goods or

1 service, and some combinations of the kinds of things that
2 are being -- that are being rendered.

3 But the point that I want to make is I believe and
4 would fully support and endorse a notion of a tiered
5 system. And I know that the -- that (inaudible) has made
6 a recommendation about a tiering system that essentially
7 says take the top five companies in the industry and look
8 at the averages over the last five years, take ten percent
9 of that number and make that the top tier. For an
10 example, in the cases that I've just mentioned, if we were
11 to take the last five year averages of the top five
12 companies, the number is about \$6 billion a year average.
13 If you then make a top tier of management consultants
14 being \$600 million, say, to \$400 million -- 400 to \$600
15 million, and there is a segment of companies in that
16 category who could certainly compete among themselves.
17 Then you can drop it another 20 percent and establish
18 another tier. But a small, little struggling company,
19 like mine, could never get anybody's attention. And, in
20 fact, when we've -- when we seek to participate, one of
21 the ways in which it is -- you are systematically
22 eliminated, particularly with government work, one of the
23 requirements is often you must be able to demonstrate that
24 you've done two or three jobs of similar size in the last
25 two to three years. And if you -- it becomes a

1 compounding problem of being able to move into the arena.

2 The other -- the last thing I'd like to say is, I
3 believe it's important -- if you think about a start-up in
4 manufacturing, you can be reasonably assured that there
5 are probably one or more of three factors involved.
6 Someone is taking some new technology and have -- and is
7 coming up with a widget that will sell; or they have a
8 better quality and reliability standard that they want to
9 bring to the marketplace that improves something that
10 already exists; or they can make it much cheaper and
11 therefore, there is an economic advantage. The question
12 is why would a person start a consulting firm? And the
13 answer is they believe they have some business process
14 ideas or some experiences that can significantly improve
15 business processes inside the enterprise. And I would
16 submit to you that it would be important that some of the
17 activities inside the federal government provide
18 opportunities for many of these ideas to move into the
19 federal procurement process. And today that's a very
20 awkward thing, particularly with the rules as they are. I
21 believe that at least the tiered system would, in fact,
22 enhance the opportunity because at some level, you could
23 have firms who are bidding in the 25,000 to even a million
24 dollar category. And that it would not be possible today
25 for most firms of our size.

1 MR. DODS: Sir, let me ask you a question. Now, the
2 size standard for your industry is six million; is that
3 right?

4 MR. PAYNE: No.

5 MR. DODS: In annual -- what's -- what's the size
6 standard for your industry right now?

7 MR. PAYNE: For -- for my industry right now?

8 MR. DODS: Yeah, management consulting, uh-huh.

9 MR. PAYNE: No. It's -- it's -- it's ten million.

10 MR. DODS: Ten million?

11 MR. PAYNE: Yes.

12 MR. DODS: Okay. And you -- you think a tiered
13 system would benefit your business, or other businesses in
14 -- in your industry?

15 MR. PAYNE: I think it would benefit others because I
16 know a number of companies that are about our size, and I
17 know the difficulty that we have in bidding on significant
18 contracts.

19 MR. DODS: Of what size? What size contracts are you
20 talking about?

21 MR. PAYNE: Contracts -- multiple-year contracts,
22 particularly.

23 MR. DODS: Uh-huh.

24 MR. PAYNE: That's where -- and -- and these are
25 generally contracts that are somewhere between three to

1 \$10 million over four to five years.

2 MR. DODS: Okay. Any other questions?

3 MR. BROWN: No, thank you.

4 MR. DODS: Okay. Thank you, sir.

5 MR. PAYNE: Sure.

6 MR. DODS: Mark Kaplan?

7 MR. KAPLAN: Good morning.

8 MR. DODS: Good morning.

9 MR. KAPLAN: My name is Mark Kaplan, and I'm a
10 partner in CEI Ventures, Inc., here in Portland, Maine.
11 In addition to providing our investors with financial
12 returns on their investment, our venture capital company
13 has an explicit goal of community and economic
14 development. We're focused on job creation for people
15 from low-income backgrounds and other social benefits,
16 such as improving health, education and the environment.

17 The company in two funds, totaling \$25 million, has
18 so far made about 20 investments in a broad range of
19 industries here in Maine, including two in biotechnology.
20 The companies we've invested in employ approximately 1,000
21 people in the state.

22 I'd like to thank the SBA and the members of the
23 Hearing Panel for conducting this series of public
24 hearings to provide the small business community an
25 opportunity to comment on the future of the SBA size

standards. My comments today will focus on an issue that has directly affected our firm and very well could again in the future. I want to make you aware of this concerning trend that is affecting the early stages of medical innovation; that is, the obstacles to participation in the small business innovation research program by businesses that are majority owned by venture capital companies.

Now, the next few paragraphs of my remarks were meant to provide the scope of the problem big picture. However, in the interest of time, I will refer you to the remarks of Cheryl Timberlake, who testified earlier from Maine BioTech. Instead, I'd like to provide a bit of an example of what the real problem has been here at home.

Our firm and one of our portfolio companies have been directly affected by the SBA interpretation. We have been working for quite some time, a few years, with another venture firm here in Portland to provide funding for a very -- very early-stage biotech company. Chemogen, Inc., located in South Portland, Maine, was founded to pursue work in the area of infectious disease diagnostics. The primary focus of that work has been to develop a rapid test to diagnose tuberculosis, one of the leading killers in underdeveloped countries. This terrible disease is also a problem here in the United States, affecting the

1 health of individuals and causing additional financial
2 burden to the healthcare system. A rapid diagnostic test
3 is of utmost importance in the effort to eradicate this
4 disease, according to the World Health Organization.
5 Unfortunately, due to the interpretive issue related to
6 the SBIR program, Chemogen, since the beginning, has been
7 unable to seek such funding.

8 Please understand ours is not a large venture firm,
9 and neither are our co-investors in Chemogen. SBIR
10 funding could have made a significant impact on the
11 development of the rapid TB test and other tests, such as
12 in the area of bio-terrorism where Chemogen has the
13 scientific expertise to pursue a diagnostic for anthrax.

14 CEI Ventures shares the same goals and objectives
15 with the SBA of developing small businesses. As I said
16 earlier, we have a stated goal of doing this work. We are
17 not in business only to provide financial returns to our
18 investors. In Chemogen we are pursuing a significant
19 social goal in a small biotechnology business, which is to
20 have a dramatic effect on the health and welfare of
21 underserved and often overlooked people in underdeveloped
22 countries and here in the United States. With this as an
23 example, it seems clear that the SBA's interpretation is
24 limiting at least this one, and more likely many, small
25 biotechnology companies from participating in the SBIR

1 program. Even just this one indicates the gravity of the
2 problem.

3 Now, in terms of a solution, I would also offer a
4 referral to Cheryl Timberlake's remarks, which with --
5 with which we agree, and we think the proposed changes
6 that she mentioned would do well for small business
7 ownership structured similar to ours and would allow us to
8 take advantage, through our portfolio companies, of the
9 important program and participate in research efforts that
10 are critical to our nation's health, safety and security.
11 Thank you for your time.

12 MR. DODS: I have a question for you. Can you
13 explain a little bit about what happens when -- if one of
14 these companies gets off the ground or -- or is successful
15 in developing a technology? What happens down that road,
16 as far as the ownership interest in the venture?

17 MR. KAPLAN: The -- the ownership interest is -- one
18 of our objectives as -- actually as a venture capital
19 firm, is to try to have broad-based ownership of our firms
20 among employees because one of the things we're trying to
21 do has to do with economic and community development in
22 creating opportunities for wealth. So we actually like,
23 for example, a company to adopt a broad-based stock option
24 plan so that all employees are participating. In the case
25 of Chemogen, we've done that. I don't recall the exact

1 who owns what. About four to \$5 million has over time
2 been raised for this company so far. It's a very long-
3 term process to do this kind of work, and we're really
4 just getting to the point where we have a test that's
5 going into trials under and with the assistance of the
6 World Health Organization in Tanzania. But it's going to
7 take millions more to get to the end.

8 MR. DODS: Does the venture capital company typically
9 have any agreement with the -- the -- whoever's starting
10 the company to sell back to them at a later date? Or can
11 -- can you sell your interest to anyone once --

12 MR. KAPLAN: Well, that's a good question. The
13 objective of a venture capital investor is, obviously, to
14 exit an investment and make a profit. And that's our
15 objective, as well. And that could be done through the
16 acquisition of a company by another company, either here
17 in Maine or elsewhere, so it could become part of a bigger
18 company. It could be -- you could sell the stock back to
19 a company. It would be less likely, depending -- in a
20 biotech situation, in particular, but we often will have
21 an opportunity within the documents for -- for us to sell
22 our stock back to the company, rather than -- rather than,
23 you know, force some kind of a sale or something like
24 that.

25 MR. DODS: How much stock does the individual usually

1 own in these companies?

2 MR. KAPLAN: It's quite variable. It depends, and
3 everybody's ownership basically goes down over time. When
4 we made our first investment in this particular company,
5 it was about \$212,000. Somebody -- another firm and group
6 of people were putting in about four hundred-and-some-odd
7 thousand. And as more money has come in, if we haven't
8 continued to put money in, our ownership would -- would
9 continue to decline. And that's true for the people who
10 are involved, as well. The -- the objective, obviously,
11 is -- is make the pie bigger, and so that everybody's
12 piece of that pie has more value.

13 MR. DODS: So the recent rule change with the 51
14 percent ownership doesn't -- does that help at all? Or do
15 you find that that's not --

16 MR. KAPLAN: Well, I think it helps some except that
17 in the case of biotech, it really -- I don't think it
18 really does that much because when -- when you're starting
19 as a very early stage biotech company, the volume of
20 dollars required to fund that company sort of swamps the
21 sort of coming-in value that a scientist, for example,
22 brings to the table. So in -- in the biotech situation,
23 you're much, much more likely to have situations where the
24 venture firms own the majority of it, simply because it
25 takes so much capital.

1 MR. BROWN: I have a few questions. And excuse me, I
2 may piggyback on some of the questions that he's already
3 raised. The name of -- one of the companies that you
4 refer to is -- is it Chemogen?

5 MR. KAPLAN: Chemogen.

6 MR. BROWN: Okay. What percent of ownership do you
7 all have of that one?

8 MR. KAPLAN: Right now our ownership of that company
9 is about 15 percent, and we have invested a total of, I
10 want to say \$700,000, something like that --

11 MR. BROWN: Okay.

12 MR. KAPLAN: -- over time.

13 MR. BROWN: So -- so I guess what you're saying,
14 which is indicative of the other firm that you referred to
15 as well, is that you, in conjunction with the other VCCs,
16 own collectively more than 51 percent?

17 MR. KAPLAN: Yes.

18 MR. BROWN: Okay. And you would say this is usually
19 the case in a lot of these situations?

20 MR. KAPLAN: Well, especially -- we've actually done
21 three different financings for this company. The first
22 financing was six or seven -- \$700,000 or something. And
23 immediately from the outset that 700,000 was worth more
24 than -- more than half the company in terms of giving the
25 entrepreneur a value for his coming to the table and being

1 able to do this. So you're mixing the talents of the
2 scientists with the capital and business acumen,
3 hopefully, of -- of the Board of Directors and people like
4 that to try to develop a business here. We actually -- we
5 put additional money in, as did the other venture
6 investor, another step along the way. And other new
7 investors were also brought to the table. So at that
8 point, the value is higher of the company, but new money
9 is coming in. The proportion owned by investors is still
10 -- is still high. And that's what continues to happen.

11 MR. BROWN: Okay. One question that I have is what
12 have firms like the two that you're referring to, what
13 have they been doing in the alternative, since you're
14 saying that wouldn't qualify for SBIR? What have they
15 been doing?

16 MR. KAPLAN: Right. We have -- Chemogen -- our firm
17 is a venture firm that we've invested in the company, as
18 has another venture firm here in town. We've also sought
19 out a lot of other investors. We've been, you know,
20 grabbing lapels, so to speak, and -- and trying to get
21 people interested in the company and in the story we're
22 telling. And it has changed, obviously, over time because
23 in the beginning there was nothing but the kernel of an
24 idea, a really good scientist, and a little bit of money.
25 Along the way, a test was developed. We actually had some

1 results. And there's -- there's more interest then.

2 In addition, Maine happens to have a very good
3 structure of an organization called the Maine Technology
4 Institute, which helps fund technology and biotech and
5 other -- seven -- seven industries in the state, provides
6 development awards primarily, to help companies develop
7 products and innovation, to bring it to commercialization.
8 Typically, it's not very much money on the whole to bring
9 something all the way to commercialization, however, and
10 other investment is required.

11 We also -- there's an organization called the
12 Foundation -- in this particular case, there's a global
13 organization called the Foundation for Innovative New
14 Diagnostics. It works closely, really side by side, with
15 the World Health Organization in trying to eradicate
16 infectious diseases in third world countries. That
17 organization's based in Geneva, Switzerland, and this past
18 winter we were able to get them interested in the test
19 that we have, and they are working with us on clinical
20 trials in Tanzania this summer, mostly with protocols and
21 things like that, but also funding a couple hundred
22 thousand dollars of the expense. So we seek the money,
23 you know, out there where we can.

24 MR. BROWN: Okay. And then just one last question.
25 And again, I'm trying to remember back to your colleague

1 who made several statements. Let's just say the
2 regulations were changed and the framework was changed,
3 which would allow firms like the two that you're referring
4 to, that would be eligible.

5 MR. KAPLAN: Right.

6 MR. BROWN: What impact do you think that would have
7 on the overall program? In other words, these two firms
8 would be in. Of course, there are concerns on the other
9 side that the competition won't be fair. What -- what's
10 your perception of what would take place?

11 MR. KAPLAN: Well, you know, I can't say that I know
12 exactly what the answer is. I think that -- I think the
13 question is, in my mind, is how can we provide some
14 opportunities for companies that really ought to get
15 developed and -- and be able to receive these types of
16 awards to further -- further their research. And I think
17 that that would happen. I think that the -- there is
18 something to be said, also, for I think perhaps -- you
19 know, one -- one might hope that with venture capital firm
20 backing and the kinds of due diligence that goes into that
21 process as well, the overall quality, perhaps, of the --
22 of the applicants to the SBIR program might actually be
23 raised, as well. So perhaps that would lead even to
24 greater success among those firms that get SBIR funds.

25 MR. DODS: Are there other government innovative

1 research programs? Or is it -- I mean, other agencies
2 have things that aren't broken down by size of the
3 company?

4 MR. KAPLAN: Well, I mean, my -- my -- the closest
5 example, I don't know federally, but here in the state, is
6 the Maine Technology Institute, which -- their approach to
7 the -- the funding of -- of projects is that they fund
8 projects. They fund innovation and technology development
9 in a -- in a project rather than a company. There --
10 there could be a very large company in this particular
11 case that wants to develop a particular new technology,
12 and then can apply to the Maine Technology Institute for
13 funds to assist them to do that. It is a matching
14 program, so it's not all free money. There actually has
15 to be a commitment by somebody there to provide matching
16 funds to get something done. And they -- they don't
17 really have a size standard in -- in their approach. They
18 have a limit on how much you can get, \$500,000.

19 MR. DODS: Okay. I think that's it. Thank you, sir.

20 MR. KAPLAN: Thank you.

21 MR. DODS: Anne Cerami? Cerami?

22 MS. CERAMI: Thank you very much. My name is Anne
23 Cerami. I'm the SBA Manager at TD Bank North. It's a
24 bank that operates in the six New England states. And as
25 the SBA Manager, over the past couple of years we have

1 unfortunately had to decline -- there's a -- there's an
2 increase in the small businesses that we have to decline
3 under the SBA program, specifically size eligibility. And
4 I just wanted to come today to share with you two that
5 happened in the last two weeks. Both of these businesses
6 had collateral shortfalls, which is primarily the reason
7 why they come to the bank, for financing. One is in the
8 service industry. This was a management buyout of an
9 advertising agency. They employ 12 people, but on an
10 average basis annually, they exceed seven million in
11 sales. So on the one hand, they operate very much like a
12 small business, but the type of revenues that they
13 generate quickly exceed the \$6 million size standard.

14 The next business is a retail. This is for
15 recreational vehicles. These are high-priced items,
16 usually starting about \$30,000. Again, this is a company
17 with only 15 employees, and quickly exceeds the six
18 million, again, which is the size standard.

19 So in coming here today, I just wanted to give you
20 the lending perspective. It's frustrating from our end
21 when we can't help these small business owners. And in
22 our eyes, they are very much so, small business owners.
23 And the size standards -- sometimes the revenue alone is
24 not the best case for size determinant. Thank you.

25 MR. DODS: Okay. Thank you.

1 MR. HAYWARD: I have a couple questions.

2 MR. DODS: We have a question for you.

3 MS. CERAMI: Okay.

4 MR. DODS: Can't get off that easily.

5 MS. CERAMI: Darn it.

6 MR. HAYWARD: Nice try.

7 MS. CERAMI: Okay.

8 MR. HAYWARD: And who made the determination that the
9 size was not appropriate?

10 MS. CERAMI: It was taken off of the -- right off the
11 --

12 MR. HAYWARD: Were either of these companies in a
13 labor surplus area?

14 MS. CERAMI: I don't know. I -- I can certainly find
15 out. Would that be another criteria that we can look at?

16 MR. HAYWARD: If they were in a labor surplus area,
17 then size would be -- differentiation would be 25 percent.

18 MS. CERAMI: Okay.

19 MR. HAYWARD: You could add 25 percent to the size
20 standard.

21 MS. CERAMI: Okay. I did not know that, but we will
22 certainly --

23 MR. HAYWARD: All right.

24 MS. CERAMI: These -- these two are still very much
25 recent ones, so we can go back. How -- so how would you

1 know, or is there a published --

2 MR. HAYWARD: There -- there are designated labor
3 surplus areas around the country --

4 MS. CERAMI: Okay.

5 MR. HAYWARD: -- which the district offices would
6 have information on. And there many times, when the
7 lenders don't -- if they feel that they have a problem
8 with the size, they should consult the district office to
9 see what -- determine whether or not it is in a labor
10 surplus area, and then the size standard can be amended
11 thereby.

12 MS. CERAMI: Add -- add 25 percent. Thank you.

13 MR. HAYWARD: Thank you.

14 MR. DODS: Okay. Next witness is -- is Joseph Jack
15 here? No? Okay. Dennis Duhl? No? I'm going back over
16 the list? Aubrey McCall? Marie Meunier? Julius Barton?
17 Stephen Maloney? I'll go get -- Richard Williams? Alan
18 Fuller? Tim Clark? Okay. That's our list. Is there
19 someone else who would like to speak?

20 MS. MEUNIER: Well, I -- I'm not sure that what I
21 have to say is very relevant, so but I will still say it.

22 MR. DODS: Okay. You have five minutes.

23 MS. MEUNIER: Okay. It won't take five minutes. My
24 name is Marie. I have two little companies, one in New
25 Hampshire and one in Vermont. In New Hampshire, we design

1 stuff. We're a prototype shop, and we mostly work for
2 NADIC. We've been doing this for 25 years. A few years
3 ago I got involved with a manufacturing company in St.
4 Johnsbury, Vermont, which is women owned and a HUBzone.
5 And we were supposedly guaranteed to get all this work.
6 And every project we work on gets snatched up by NISH
7 organization or NIB. That doesn't work. NISH is the
8 National Industry for the Severely Handicapped and NIB is
9 the National Industry for the Blind. They cannot stitch,
10 so all they do is they get the contract, then they're just
11 going to shove it on back to us for nothing, because
12 they're not really allowed to charge more than a very
13 small percentage over the cost. But that's not what they
14 do. We had a big fight last year with NADIC because I
15 could make these jackets for a lot less than they were
16 buying them from NISH. But we still didn't get that. So
17 I do believe that the size standard has to stay under -- I
18 mean, anything over, you know, a hundred people is a big
19 business. We're 15 in New Hampshire, and 35 in Vermont.
20 So --

21 MR. DODS: I appreciate your concerns. A lot of
22 those type programs --

23 MS. MEUNIER: So we're losing a lot of contracts to
24 NISH, NIB and prison systems. They have no business doing
25 this. I mean, it was --

1 MR. DODS: I understand what you're saying. Most of
2 those programs are statutory by Congress, so there's -- we
3 -- we --

4 MS. MEUNIER: No, but they list every product that
5 can possibly be manufactured as their products, and then
6 they just go back to the people who design them and say,
7 hey, here why don't you make them for us for -- for
8 absolutely nothing. So I don't know whether that was, you
9 know, relevant to this, but --

10 MR. DODS: Okay.

11 MS. MEUNIER: It's been very painful. I mean, I'm
12 going to lose my business because of that. And I can't --
13 you know, I can't keep working. I mean, even -- you know,
14 we won't even be able to get funding for the next batch
15 because we need to have experience. How can you get
16 experience if everything you ever get gets snatched away
17 from you? You design it, then you lose it.

18 MR. LALUMIERE: So where are you based --

19 MS. MEUNIER: And we don't get paid for design.

20 MR. LALUMIERE: Where are you based, Marie, in New
21 Hampshire? I mean, where's your office? Where do you --

22 MS. MEUNIER: North Conway, New Hampshire.

23 MR. LALUMIERE: North Conway?

24 MS. MEUNIER: I mean, I don't get paid to work for
25 NADIC. It's like the promise that we're going to get

1 something. The system doesn't work.

2 MR. HAYWARD: Are you a subcontractor to the women-
3 owned HUBzone firm? Is that what you're saying?

4 MS. MEUNIER: No, I own that.

5 MR. HAYWARD: Oh, you are the woman-owned HUBzone
6 firm?

7 MS. MEUNIER: That's correct.

8 MR. HAYWARD: This is a DOD contract?

9 MS. MEUNIER: This is going to be a DOD, yeah. But
10 it -- it's not -- we're going to be a subcontractor to
11 NISH or NIB because that's -- that's what they do. They
12 list all these products as their own products.

13 MR. DODS: Well, this is a little bit off the -- off
14 the subject. And maybe we could talk --

15 MS. MEUNIER: Well, I know. That's why I didn't
16 think it --

17 MS. DODS: No, but Marie, maybe we could talk offline
18 about that and see what the -- I mean, but your -- your
19 issue is an important one. It's a little bit off the
20 subject for this hearing.

21 MS. MEUNIER: That's correct.

22 MR. DODS: But I think it warrants some discussion,
23 so why don't we try to, maybe after the hearing, talk
24 about it.

25 MS. MEUNIER: Okay.

1 MR. DODS: Okay?

2 MS. MEUNIER: Thank you.

3 MR. DODS: Is there anyone else who would like to
4 testify? I just want to reiterate that if you did
5 testify, you can give your material to Rose here, or if
6 you have any other material you want to submit for the
7 record, to take back to Washington, see Rose. I guess we
8 will now conclude the hearing with a statement from the
9 Acting Regional Administrator.

10 MR. HAYWARD: It's tough going by prepared text, for
11 me, anyway. In concluding today's hearing, we want to
12 thank everyone for participating, certainly on behalf of
13 the Regional Administrator, Charles Summers. And I'll
14 assure you that SBA has listened to each of the testimony
15 today and will take everything into consideration.
16 Deliberations on the new size standard policy will
17 commence at the close of the final hearing, and I believe
18 that is on the 29th in Los Angeles -- isn't that the last
19 one -- and that the new policy proposal will be done as
20 quickly as possible. The public will have another
21 opportunity to comment on any proposal that's issued in
22 the future, so we thank you for your participation.

23 MR. LAMOURREUX: Can I make one statement on record?

24 MR. DODS: Sure. Come on up.

25 MR. LAMOURREUX: Yeah. My name is Phil Lamourreux.

1 I noticed there was some interest in the protest
2 practices, okay, how we protest. If you really want to
3 know, give us a format. We'll tell you. I protest a lot
4 of jobs. And I'll tell you exactly what happens, and I'm
5 getting a lot of people pissed off at me, but sorry. You
6 know, there is -- that is something that does need to be
7 discussed with SBA. I've tried to do it with the small
8 business people at the different facilities. They don't
9 want to discuss this. But there is a big -- some big
10 problems in our protests.

11 MR. HAYWARD: In closing, I just want to thank you
12 Mary McAleney and her staff here in the State of Maine for
13 everything that they've done to facilitate this hearing.
14 We certainly appreciate it.

15 MR. DODS: Okay. I think that concludes our hearing.
16 Thank you.

17 (The hearing adjourned at 10:30 a.m.)
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C E R T I F I C A T E

I, Thomas U. Gordon, a Notary Public in and for the State of Maine, hereby certify that the above-captioned proceeding was recorded by me and later reduced to print through transcription, by Jeannette Beyler, a subcontractor for Brown & Meyers, Inc., and the foregoing is a full and true record of the proceedings.

I further certify that I am a disinterested person in the event or outcome of the above-mentioned cause of action.

Any changes in form or substance which the witness has made have been entered upon the record by me.

IN WITNESS WHEREOF I subscribe my hand and affix my seal this 7th day of June, 2005. Dated at Portland, Maine.



Notary Public

My Commission Expires
July 13, 2008